STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2000-489

August 16, 2000

PUBLIC UTILITIES COMMISSION
Amendments to Standard Offer Service Rule
(Chapter 301)

ORDER ADOPTING RULE
AND STATEMENT OF
FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

Through this Order, we amend certain provisions of our current standard offer rule. The amendments are based primarily on our experience in implementing the rule and conducting last year's standard offer bid process, and on information provided to us by prospective and actual bidders following the conclusion of last year's bidding.

II. BACKGROUND

By Orders issued June 29, 1999 and April 22, 1998 (Docket Nos. 98-576 and 97-739), the Commission adopted rules governing standard offer service and the bid process by which it would choose standard offer providers (Chapter 301). Because these rules were designated major substantive, the Legislature authorized their final adoption under 5 M.R.S.A. § 8072.

Pursuant to the standard offer rules, the Commission conducted bid processes during 1999 to choose standard offer providers for the service territories of each of the investor-owned utilities in Maine.[1] These bid processes involved the issuance of request for bids (RFBs) during August, the submission of bids in October, and the designation of standard offer providers by December 1. The processes resulted in the Commission designation of standard offer providers for each of the three standard offer classes in the Maine Public Service Company (MPS) territory and for the residential/small non-residential class in the Central Maine Power Company (CMP) territory. However, the Commission rejected the bids and terminated the processes for the two remaining classes in CMP's territory and for the three classes in the Bangor-Hydro Electric (BHE) territory, because there were no qualifying bids for some classes and unacceptably high bids for the other classes.[2]

[1] Pursuant to section 8(E) of Chapter 301, the consumer-owned utilities opted to conduct their own bid processes to obtain standard offer providers for their respective territories.

[2] The Commission, pursuant to Chapter 301 section 8(D), directed CMP and BHE to provide standard offer service for those classes in which the Commission bid process did not result in the selection of a standard offer provider.

Based on our experience in conducting the bid processes, our growing familiarity with the wholesale market, and the expressed concerns of market participants, we amend Chapter 301 in several respects. We seek to improve the process and increase the likelihood of successfully choosing standard offer providers for all classes at reasonable standard offer rates. In many cases, the amendments provide the Commission with greater flexibility to determine the details of the bid process. For example, the timing for issuance of the RFBs, submission of bids, and designation of the providers would not be determined in the rule, but specified in the RFBs. Because the Legislature amended the Restructuring Act to designate future changes to the standard offer rules as routine technical rules, P.L. 1999, ch. 577, we are able to promulgate these rule changes before we conduct our next bid process for standard offer service beginning March 1, 2001.

III. RULEMAKING PROCESS

On June 15, 2000, we issued a Notice of Rulemaking and a proposed amended rule. Consistent with rulemaking procedures, interested persons were provided an opportunity to provide written and oral comments on the proposed amendments. We received comments from the Public Advocate, CMP, BHE, MPS, Houlton Water Company, Van Buren Light & Power District, Independent Energy Producers of Maine (IEPM), Energy Atlantic (EA), WPS Energy Services, Inc. (WPS-ESI), Competitive Energy Services (CES), PPL Energy Plus Co., LLC (PPL), Hydro-Quebec (HQ), FPL Energy Maine, Inc. (FPL), and Utility.com. These comments are discussed in Section IV, below.

IV. DISCUSSION OF AMENDMENTS

A. Rate Structure (section 2(A)(3))

The amended rule removes the requirement that seasonally differentiated rates be compatible with the utility's rate structure. The language is unchanged from the proposed rule.

The existing rule allowed standard offer rates for the medium and large non-residential classes to reflect seasonal and time-of-day differentiation only if compatible with the transmission and distribution (T&D) utility's rate structure.[3] The proposed rule removed this restriction for seasonal differentiation. Utilities in Maine currently have separate rates for winter months and non-winter months. Because the New England generation market tends to peak in the summer, suppliers may want to charge higher prices in the summer months only. Allowing suppliers this flexibility may also help address the concern over "gaming" the standard offer which can occur if customers move onto standard offer service at times of relatively higher market prices.

[3] The rule does not allow any differentiation for the residential/small non-residential class.

Our understanding is that the utilities' billing systems can accommodate flexibility in this regard. Conversely, we understand that it is much more difficult for utility meters and billing systems to accommodate flexibility for time-of-day rates. Additionally, it appears that such flexibility is not as important as allowing suppliers to reflect higher summer costs in their rates. For these reasons, we did not propose a similar change for time-of-day rates.

The Public Advocate, BHE, WPS-ESI, HQ, FPL and Utility.com supported this change to the rule. CMP did not oppose the change to the rule, but expressed concern regarding customer confusion and dissatisfaction that might occur if prices change too frequently. CMP suggested that price changes be restricted to four seasonal changes. MPS commented that standard offer structures should continue to be compatible with T&D rate structures, because frequent rate changes could lead to customer confusion and introduce complexity that may result in billing errors.

We agree with the concerns of CMP and MPS that numerous rate changes could cause customer confusion and dissatisfaction. The change in the rule, however, only removes the compatibility requirement and does not address how many rate changes will be allowed. The precise parameters of seasonal pricing that will be permitted is appropriately stated in the RFBs. We will consider restricting the number of changes to four, as suggested by CMP, so that suppliers could have different rates for both the summer and winter periods.

B. Opt-Out Fees (section 2(C)(2))

We adopt several changes to the opt-out fee provisions of the rule. These changes are intended to make the provisions more effective in deterring "gaming" of the standard offer, while limiting barriers for customers to re-enter the competitive market. Specifically, we increase the opt-out fee to equal the customer's two highest standard offer bills, apply the fee only when the customer takes standard offer service in the summer months, allow customers to re-enter the competitive market without paying the opt-out by remaining on the standard offer for a shorter period of time, and exempt northern Maine customers from the opt-out fee provisions unless the Commission finds there is a significant potential for gaming.

The existing rule addresses the concern of "gaming" the standard offer (i.e. the strategic movement of customers in and out of the service) through the imposition of opt-out fees equal to a 1-month bill. Under the existing rule, the fees, which are intended to be a deterrent, are assessed when a customer in the medium or large customer class, or a group of customers in the small class with an aggregate demand greater than 50 kW, leaves the standard offer within 12 months of returning from the competitive market.

During last year's bidders' conference, some bidders asked whether the language of the rule would allow the imposition of an opt-out fee on the supplier of electricity (as opposed to an aggregator) who moved groups of smaller customers in

and out of the standard offer. On September 9, 1999, the Commission issued an advisory ruling that concluded that the opt-out provision applies to suppliers as well as aggregators (Docket No. 99-111). The proposed rule modified the language of the rule to clarify this point. No commenter opposed this modification and it is adopted in the final rule.

To ensure the intended deterrent effect of the opt-out charge, the proposed rule increased the charge to equal the customer's standard offer bill for the two most recent months that the customer has taken standard offer service. The existing rule uses a single month's bill as the opt-out charge. In the Notice of Rulemaking, however, we sought comment on whether the charge should be increased in light of our proposal to allow summer peak pricing. We also sought comment on whether the gaming issue should be addressed by modifying the rule so that medium and large non-residential customers may not return to the standard offer after entering the competitive market.

The Public Advocate, BHE, EA, WPS-ESI, CES, HQ and FPL supported the increase in the charge. CMP commented that the opt-out fee not only deters gaming, but also inhibits competition in that a customer who drops to the standard offer for legitimate reasons has an incentive to stay out of the competitive market for 12 months to avoid paying the fee. CMP stated that a properly structured seasonal rate is a more effective deterrent and would make an opt-out fee unnecessary. Utility.com opposes an increase in the charge, stating that the best way to address gaming is to price standard offer in line with market prices. The Public Advocate, BHE, WPS-ESI, CES and FPL opposed fees to re-enter the standard offer, while EA supported such a fee as superior to a charge upon leaving standard offer.[4]

We agree that the change in the rule to allow summer peak pricing should substantially reduce the potential for gaming the standard offer. However, because the potential for gaming significantly increases the risk and cost of providing standard offer service, we are reluctant to eliminate the charge at this time. In addition, we do not allow seasonal pricing for the small class and, therefore, conclude that a deterrent with respect to this class should be maintained. We do share CMP's concern that the fee could restrict movement into the competitive market. Accordingly, although we increase the amount of the charge, we restrict its applicability to reduce the negative impacts on movement back to competitive market. Under the amended rule, the opt-out fee only applies if the customer or group of customers takes standard offer service during the summer period. In addition, the customer can avoid the fee by remaining on the

[4] FPL commented that the Commission should consider creating a separate class of standard offer service for customers returning to the standard offer (as is the case in Massachusetts and Rhode Island). Such an approach would constitute a substantial change to the structure of standard offer service in Maine. Because the matter was not raised in the Notice of Rulemaking, it is beyond the scope of this rulemaking.

standard offer only until the next standard offer period begins (the following March 1), rather than 12 months as required in the existing rule. Finally, the charge is no longer applicable to customers in northern Maine.[5] We made this change because the northern Maine area does not peak in the summer and we have not observed the volatility that would raise the gaming concern. We have, however, reserved the ability to reinstate an opt-out fee upon a finding that there is good cause to do so.[6]

We decide not to impose at this time any fee for re-entry to standard offer service. There are still relatively few competitive electricity suppliers active in Maine. As a result, customers may be forced back onto the standard offer for legitimate reasons. Our view is that it would be extremely difficult to determine when entering the standard offer occurs for legitimate as opposed the gaming reasons.

The proposed rule added a provision to clarify that, if a charge is imposed, customers above 50 kW are responsible for paying the charge (regardless of whether the customer is part of an aggregate), while the competitive electricity provider must pay the charge resulting from smaller, aggregated customers gaming the standard offer. We received no comments on this addition and it is included in the final rule.

CMP commented that the rule should make clear that the obligation of the T&D utility is to make reasonable efforts to collect the opt-out fee and pay only those amounts actually collected to the standard offer provider. We agree with this proposed clarification and include it in the final rule.

CMP also commented that the requirement in the existing rule for customers to notify the utility when terminating standard offer is inconsistent with Chapter 322's provision that competitive providers act to enroll customers. We agree and remove this requirement.

CES commented that the 50 kW cutoff for the application of the charge is arbitrary and should be replaced by each utility's breakpoint between the small and medium customer class. The rule already uses the utility's customer class breakpoint. The 50 kW criteria only applies to customers of a consumer-owned utility that has a single standard offer rate class. CES also urged the Commission to discard the use of the word "customer" and use the worked "account" because its meaning is much more clear. We decline to remove "customer" from this section of the rule. Our view is that

[5] We have added definitions of "northern Maine" and "Maritimes control area" to the rule.

[6] The existing rule has a similar provision that allows the Commission to institute an opt-out fee for smaller customers upon a finding of good cause. The provision in the current rule specifies that the finding must occur in an adjudicatory proceeding. We removed this restriction because it is not clear that an adjudicatory proceeding would otherwise be required.

the meaning is clear in the context of the rule. We have removed the word "account," because its use was not grammatically correct in this portion of the rule.

C. Transfer of Service (section 2(D))

The existing rule states that, with limited exceptions, transfers onto and out of standard offer service will occur on the "normally scheduled meter read date." To ensure proper billing, the transfer of service occurs on the actual meter read date, not the scheduled date. Because utilities occasionally do not read the meter on the "scheduled" date, we proposed to change the language to refer to the "meter read date."

The Public Advocate, CMP, BHE, CES and FPL supported the proposed language change. We adopt the proposed language without change.[7]

D. Financial Capability (section 3(A)(2))

1. Amount

We amend the rule so that the financial capability amount is not tied to the actual bid prices; rather, the amount will be $0.01 per kilowatt-hour multiplied by the applicable billing units. We also change the rule to allow the financial capability amount to decrease over time.

The existing rule ties the amount of the required bond, letter of credit, or corporate guarantee to the bid price. However, as discussed below, we have modified the rule to allow the Commission to pre-screen bidder eligibility prior to the submission of the actual bid prices. The ability to satisfy the financial capability requirement is a major component in determining bidder eligibility. Accordingly, we proposed to amend the rule so the amount of the financial capability requirement would not be tied to actual bid prices. We proposed instead that the amount of the requirement be $0.01 per kilowatt-hour multiplied by the appropriate billing units of the standard offer class (the appropriate billing units would be specified in the RFBs).

As indicated above, the Commission may allow bids for differing time periods. Accordingly, the proposed rule specified that the amount of the financial capability requirement will reflect the number of years of the bid. To ease the burden on suppliers, the proposed rule also stated that the amount of the requirement may be reduced as the remaining obligation declines. The Commission would specify the details by which the financial requirement may decline in the RFBs.

[7] HWC stated that the 2-day notice provision for transfer into standard offer service is too short and should instead be 4 days. This matter was not raised in the Notice of Rulemaking and HWC did not explain why the provision is a problem. HWC can seek a waiver of this provision upon a showing of good cause.

No commenter opposed the proposed amendments and we adopt them without change. The amount of the financial security ought to approximate the damage that might result if a designated provider defaulted on its obligation to provide service at its bid price. The actual damage will depend on market conditions at the time of the default and cannot, therefore, be known in advance. In our view, the amount in the amended rule is sufficient to ensure the financial capability of the bidder and to protect standard offer customers in the event of the default.

2. Corporate Guarantee

To allow bidders greater flexibility in meeting the financial capability requirement, we amend the rule as proposed to allow a corporate guarantee to be provided by the standard offer provider's wholesale supplier or an affiliate of the wholesale provider. In our view, this change could reduce the cost of the financial capability requirement and increase the number of bidders, without sacrificing the customer protection aspect of the provision.

We also adopt the proposed change to lower the debt rating criterion from "A" to "BBB+" for Standard & Poor's and Fitch, and from "A2" to "Baa1" for Moody's, as well as the change to the rule to account for the merger of Fitch and Duff & Phelps.

CMP, BHE, EA, CES and FPL agreed with the proposed changes to the corporate guarantee section of the rule. The Public Advocate and WPS-ESI expressed concern over reducing the debt rating criterion, stating the importance of avoiding a default by the standard offer provider. WPS-ESI also opposed allowing wholesale suppliers to provide the guarantee because of the complexity that could occur if a provider has multiple wholesale suppliers.

Although we agree with the Public Advocate that it is important to avoid a provider default, in our view the lower debt rating criterion is more consistent with those typically required in the wholesale market, and will allow additional companies to provide a corporate guarantee while maintaining sufficient protection for customers. In response to WPS-ESI's opposition, we note that the change to allow wholesale suppliers to provide the corporate guarantee is only an additional option for bidders. Bidders need not take advantage of the option if they find it undesirable or too complex.

3. Use of Proceeds

Finally, we add a new provision (section 3(A)(2)(c)) that specifies that the proceeds of the financial capability requirement may only be used to pay the additional cost of providing standard offer service. The "additional cost" is defined as all costs beyond the amounts standard offer customers would have paid to the defaulting provider through their standard offer rates. This provision was contained in

last year's RFBs. We add it to the rule to assure that the financial requirement proceeds will only be used to cover the actual damages of a default.

No commenter opposed this addition. CES suggested that "additional cost" should include administrative costs and related costs incurred to obtain replacement power. CMP stated a concern that the proposed language could be read narrowly to exclude the utility's internal labor costs. We address these comments by modifying the proposed language so it now specifies all costs of supply and administrative costs incurred to acquire replacement power.

E. Provider Obligations (section 3(B))

We adopt the several minor changes to this section of the rule as contained in the proposed rule. No commenter opposed these changes.[8]

The existing rule has one provision that states that providers are responsible for line losses up to the delivery point (paragraph 1), and another provision that states standard offer service includes losses from the delivery point to the customer meters (paragraph 2). We have simplified the rule by stating in one provision that providers are responsible for all losses.

Paragraph 4 requires providers to comply with the requirements of the bulk power system operator. Regarding northern Maine, we have replaced general descriptions with specific references to the Northern Maine Independent System Administrator and the Maritimes control area.

Paragraph 5 of the existing rule requires providers to comply with their contractual obligation to the T&D utility. We have added an explicit statement that providers must comply with all applicable statutory and regulatory requirements, as well as requirements contained in the RFBs. We have also deleted references to the "standard form contract" and replaced them with "standard offer contract."[9] We make this change because, as discussed below, we may allow bidders to suggest changes to the standard form contract during the bid process.

[8] FPL suggested that the Commission consider changing the rule so that the standard offer provider is paid on wholesale deliveries to the T&D utilities rather than deliveries to the retail customer's meter. Maine's Restructuring Act contemplates that the standard offer provider be the retail provider. We therefore consider FPL's suggestion as beyond our authority to adopt.

[9] We make the same change in other areas of the rule.

F. Utility Obligations (section 5(A))

We adopt the proposed change to section 5(A), which requires utilities to provide T&D services to standard offer customers. The existing rules states that utilities must provide services from the "delivery point." Because the delivery point may not be the border of the utility's service territory, we modify the language to state that T&D services must be provided within the utility's "service territory." No commenter opposed this change.[10]

G. Standard Contract (section 5(D))

We amend Section 5(D)(2) to state that the Commission may allow bidders to propose changes to the standard form contract during the bid process. The Commission would be required to consult with the utility before accepting any changes to the contract.

We proposed this change because some potential providers may not participate in other processes through which the standard form contract is developed. Certain language in the standard form contract may, however, represent a barrier to submitting a bid. Although we do not foresee negotiating major changes to the contract during the bid process, accommodating reasonable changes may help increase the number of bidders.

Most commenters supported allowing bidders an opportunity to propose changes to the standard contract. However, several commenters stated that, to assure fairness, all bidders must be informed of changes to the contract sufficiently in advance of the submission of the bids so that bidders can take the contract changes into account. CES and BHE expressed concern that allowing bidders to propose changes could increase complexity and delay the choice of the standard offer provider.

We agree with commenters that the process by which changes would be proposed and considered must be fair to all bidders and not delay the process. We will, thus, specify in the RFB the process by which proposed changes could be made and considered. Any changes to the contract or allowable alternatives will be communicated to bidders before the submission of the bid prices. We contemplate that consideration of contract changes will occur in a prescreening stage and not include substantial modifications. In this way, we can ensure that the process will not be delayed by consideration of contract changes.

[10] WPS-ESI stated that the language may result in a consumer-owned utility (COU) not being responsible for transmission to its border. The COU obligation in this regard derives from the Commission-approved standard contract. Nothing in this provision relieves COUs of their obligation under the standard contract.

H. Information Provided By Utilities (section 6)

The existing rule is very specific and formal in defining the data, format, and process by which utilities must provide information to standard offer bidders. We adopt several changes to this section to give the Commission greater flexibility to determine, during the bid process, what information should be provided and how to provide it. These changes will allow the Commission to react, during the design of the bid process, to suggestions as to precisely what data would be the most helpful and how best to provide it. No commenter opposed these amendments and we adopt them with minor clarifying changes from the language initially proposed.[11]

I. Bid Requirements (section 7)

1. Term Length and Contingencies

We amend several provisions to allow the Commission more flexibility in determining, during the design of the bid process, the type of bids that will be acceptable. The existing rule prohibits bids that are contingent upon selection as the provider for another standard offer class. We have removed this prohibition so that the Commission will have the option to allow such contingent bids. The existing rule also contemplates that the Commission will determine one bid duration. The amended rule allows the Commission to permit bids of differing durations. We have decided, however, to maintain the rule's prohibition on indexed or formula pricing. Finally, we have removed some language that is now obsolete concerning the initial standard offer period.

In our Notice of Rulemaking, we sought comment on the degree of flexibility we should allow regarding the bids. We noted that in last year's initial bid process, we specified the term length to be one year, and that contingent bids would not be allowed. The objective of this approach was to keep the process simple, make the evaluation criteria as objective as possible, and avoid having to trade-off the interests of classes against one another. However, we decided to consider allowing bidders more flexibility in crafting their bids because this could maximize participation by bidders and promote creativity that might result in bids that are in the public interest.

Most commenters agreed that increased flexibility could result in more desirable bids. However, several commenters expressed serious concern regarding the evaluation process if bidders have flexibility. HQ, EA, WPS-ESI and the IEPM commented that the evaluation criteria must be objective and known to bidders prior to bid submission. The Public Advocate and MPS opposed indexed prices as overly complex, while CES and Utility.com advocated for such pricing as a means to assure standard offer pricing is in line with the market. FPL advocated for the

[11] CMP and MPS expressed concern that data requirements be determined so that there is sufficient time to prepare and provide the data. We will determine the precise data requirement so that it can be developed in an orderly and fair manner.

preservation of fixed prices, but supported a mechanism to adjust prices for substantial changes in market conditions (e.g., oil or gas prices). The Public Advocate and WPS-ESI supported allowing bids of various lengths, but EA, CES, and Utility.com stated a concern that longer terms would result in prices that would not reflect the market.

As stated above, we have modified the rule to provide the Commission with the option to allow more flexibility.[12] The precise nature of allowable bids will be specified in the RFBs. At this point, we contemplate allowing bidders substantial flexibility in structuring their bids. This flexibility is likely to include allowing bids of varying lengths and bids contingent on selection as the provider for other standard offer classes.[13] Our view is that allowing bidders to be creative in fashioning their bids could produce attractive bids that are in the public interest and promote the goals of industry restructuring. We realize that allowing such flexibility could make it difficult to apply purely objective evaluation criteria to the bids. We will strive to adopt evaluation criteria that are as objective as feasible, although some subjective judgment may be necessary. We will specify in the RFB in as much detail as possible the criteria that will be used in evaluating the bids. Finally, we leave unchanged the rule's prohibition on indexed prices. Although we understand that indexed prices could reduce provider risk and thus prices, our view is that as a default service it is more appropriate that standard offer prices be specified. Such pricing is simple and provides a known benchmark for the competitive market.[14]

2. Portions of Class Requirements

The existing rule requires any bid for a portion of the medium and large non-residential classes to include a bid for 100% of the class load. We amend the rule to remove this requirement so that bidders may bid on any 20% increment of the class load. Under the amended rule, all three of the standard offer classes would be treated identically: bids can be up to any 20% increment but must include a bid for all increments up to the highest percentage increment in the bidder's proposal.

The purpose of the original provision was to ensure the receipt of bids for the entire medium and large class requirements. However, bidders could easily frustrate the intent of the provision by bidding an extremely high price for the higher

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[12] In response to a concern expressed by CES, we will not allow any bids that involve deferral of costs. All price and volume risk will be on the supplier. We do not, however, rule out the possibility of deferrals in the extreme circumstance in which a utility must provide standard offer service without a firm wholesale supplier.

[13] We will allow bidders to submit more than one bid and to designate that certain bids not be considered if other bids are accepted. This will ensure that bidders are not chosen to serve more load than they desire.

[14] If customers wish to take advantage of lower prices that might result from indexing, we expect such products will be available in the market.

increments that they were not interested in serving. Accordingly, our view is that the existing provision does not serve any useful purpose. We maintain the requirement for bids on the lower increments to make it more likely that we can fulfill the legislative directive to obtain at least three standard offer providers for each utility territory (subject to acceptable rate impacts). See 35-A M.R.S.A. § 3212 (2). We received no comments opposing this amendment and the language is unchanged from the proposed rule.

3. Statement of Financial Capability

Consistent with the amendment, discussed above, to allow wholesale suppliers or affiliated corporations to provide a corporate guarantee, the amended rule states that the certified statement regarding the provision of the corporate guarantee that must accompany the bid may be provided by the wholesale supplier or an affiliate. We received no comments opposing this amendment and the language is unchanged from the proposed rule.

J. Bidding Procedure and Selection (section 8)

1. Process

We amend the rule to remove certain timing and procedural requirements. This will give the Commission more flexibility to determine the precise bidding procedure that will maximize bidder participation and the submission of desirable bids. The amendments would also allow the Commission to adopt alternative timing and procedures for the different utility territories and to decide on different procedures for future years without having to conduct a new rulemaking. The amended rule does specify that the selection date will be no less than 45 days before the beginning of service.

The Commission will determine the details of the process when it develops the RFBs. To inform these determinations, the Notice of Rulemaking sought comment on what should be the length of time between firm bid submission and selection. We stated our general view that the time period should be substantially reduced from the two months prescribed in last year's process and noted that we were considering a period of no more than two weeks. We also sought comment on when the bid process should begin and when it should conclude with the designation of the providers.

Commenters generally supported the removal of timing and procedural requirements to allow the Commission to react to changing circumstances when it designs the bid process. CES opposed, stating that changes to bid process timing and procedural requirements should occur in a rulemaking. The Public Advocate, EA, HQ, PPL and FPL supported a 2-week period between firm bid price submission and selection. Commenters generally viewed 45 days as appropriate for the minimum period between selection of the provider and the beginning of service.

WPS-ESI suggested a 28-day period, while HQ and FPL stated that 60 days would be preferable.

We have removed most of the timing and procedural restrictions from the rule.[15] We do not believe a rulemaking proceeding is the best forum to consider changes to the timing and procedural requirements of the bid process, which may be required each year. To the extent desirable, we will seek comment on such issues using less formal means than a rulemaking. We do adopt the 45-day minimum period from provider selection to service date for the following reasons: it ensures that selected providers will have adequate time to prepare to provide service; it provides sufficient time for utilities to program and test new standard offer rates and it provides advance notice to competitive providers of the prices they have to beat. We note that this is a minimum period. We may increase the time when adopting the bid process schedule.

2. Duration of Proposals

As discussed above, we are considering allowing bids for various term lengths. Accordingly, we have added a provision (Section 8(5)) that states the Commission may proceed in this manner. The provision specifies only that the bid duration would be no less than one year. The determination of the bid duration and whether to allow bids of different durations would be made during the development of the RFBs. The RFB will state permissible bid durations and bidders will be allowed to submit alternative bids for differing time periods.

Although commenters differed as to the durations of bid proposal that the Commission should allow, no commenter opposed the addition of this provision. The provision is unchanged from the proposed rule.

3. Selection Criteria

We amend the rule to remove the requirement that selection be based solely on the lowest price for each standard offer class. The amended rule states that selection will be based on the objectives of obtaining the lowest standard offer price for each class, the lowest cost for standard offer service overall and the stability of standard offer prices.

The existing rule states that the selection criterion for each standard offer class will be solely the lowest bid price for each class. The proposed rule recognized that, because of the possibility of contingent bids and varied bid term lengths, it may not be desirable or practical to objectively compare bids based solely on the lowest price for each class. Thus, the proposed rule stated that, when it was not

[15] Based on the comments, we anticipate a process that will require firm bids to remain open for no longer than two weeks.

reasonable to compare bids solely on price, the Commission would apply a public interest standard.

EA, WPS-ESI, HQ, CES, HWC and FPL opposed a "public interest" standard because it could not be applied objectively. The Public Advocate, IEPM, and Utility.com suggested that the Commission include the "promotion of the competitive market" among the selection criteria.

We agree that the "public interest" is too vague a standard to be used for this purpose, and we have removed it from the rule. The amended rule maintains price for each class as a selection criterion, and adds overall cost of standard offer service and rate stability as selection criteria. This will allow us, for example, to select a multi-year bid in part because it will result in stable rates for standard offer customers, while informing competitors of the price they will have to beat over a longer period of time.

4. Multiple Providers

The existing rule states that multiple providers will be chosen for a class if doing so does not increase "total electric rates" by more than 0.5%. For ease of administration, we change the rate impact test so that it compares standard offer prices, rather than total electric rates. We adopt as the rate impact test a 1.5% increase in the standard offer price. Because the generation component of total rates is approximately one third, the proposed 1.5% test generally maintains the same rate impact criterion as in the current rule. This amendment is unchanged from the proposed rule.

WPS-ESI was the only commenter that opposed this change. Its concern appears to be an "expansion" of the rate impact test from 0.5% to 1.5%. However, as stated above, the amended rule is intended to generally maintain the existing rate impact criteria.

5. Insufficient Bids

We add provisions stating that, in the event the Commission receives no bids for a class or finds that all bids for a class must be rejected, it may negotiate with individual providers or direct the utility to provide the service. The existing rule provides the Commission with only the option of requiring the utility to be the standard offer provider. We add the option of individual negotiations with potential suppliers because we prefer standard offer service to be provided by competitive suppliers rather than utilities, as contemplated in the Restructuring Act. In addition, we note that this change makes the provision more consistent with the provisions regarding a default by a standard offer provider. In such a case, section 9 of the rule allows the Commission to negotiate with potential replacement suppliers in addition to directing utilities to provide the service.

The Public Advocate, CMP, BHE and FPL supported this amendment. EA and HQ stated that there must be an objective criterion for rejecting all bids. CES stated that the Commission should always accept the best bid that is submitted.

We emphasize that the rejection of all bids would only occur in extreme circumstances. We would not, for example, reject an otherwise acceptable bid because of a belief that we could negotiate a better price. We cannot, however, abandon our duty to protect the public interest by limiting our discretion to reject all bids to a purely objective standard. We must account for the potential for unforeseen circumstances by maintaining our ability to reject all bids if they are unreasonably high and acceptance would not be in the public interest

K. Other Issues

1. Adders

The IEPM and EA commented that the standard offer price should include appropriate adders to encourage competitive providers to enter Maine's retail market. WPS-ESI strongly opposed such adders, stating that the competitive market should establish standard offer prices.

Whether to include adders on the standard offer price and how such adders would be established raise very complex and significant questions. These issues were not raised in the Notice of Rulemaking and thus are outside the scope of this proceeding. Additionally, there is insufficient time to address and resolve the issues prior to beginning of this year's bid process. Accordingly, we decline to address the issues in this rulemaking.

2. Northern Maine

Van Buren suggested that it might be preferable to allow bids on the entire northern Maine load, rather than on an individual utility basis. WPS-ESI does not favor this approach.

COUs have the option to conduct bid processes for their own service territories. 35-A M.R.S.A. § 3212(6). As a result, a combined bid process for northern Maine can only occur if the COUs consent. We will discuss this matter with northern Maine market participants to determine if a combined bid approach is desirable and workable.

Accordingly, we

O R D E R

1. That the attached Chapter 301, Standard Offer Service, is hereby adopted;

2. The Administrative Director shall send copies of this Order and the attached proposed rule to:

a. All electric utilities in the State;

b. All persons who have filed with the Commission within the past year a written request for notice of rulemakings;

c. All persons on the service list in the rulemaking, Public Utilities Commission, Bidding Processes and Terms and Conditions for Standard Offer Service (Chapter 301), Docket No. 97-739;

d. All persons who filed comments in Docket No. 2000-489;

e. All licensed competitive electricity providers in the State;

f. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5); and

g. The Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115 (20 copies).

Dated at Augusta, Maine, this 16th day of August, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.